

109TH CONGRESS  
2D SESSION

# S. 3871

To amend the Solid Waste Disposal Act to direct the Administrator of the Environmental Protection Agency to establish a hazardous waste electronic manifest system.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 7 (legislative day, SEPTEMBER 6), 2006

Mr. THUNE (for himself and Mr. JEFFORDS) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To amend the Solid Waste Disposal Act to direct the Administrator of the Environmental Protection Agency to establish a hazardous waste electronic manifest system.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Hazardous Waste  
5       Electronic Manifest Establishment Act”.

1 **SEC. 2. HAZARDOUS WASTE ELECTRONIC MANIFEST SYS-**  
 2 **TEM.**

3 (a) IN GENERAL.—Subtitle C of the Solid Waste Dis-  
 4 posal Act (42 U.S.C. 6921 et seq.) is amended by adding  
 5 at the end the following:

6 **“SEC. 3024. HAZARDOUS WASTE ELECTRONIC MANIFEST**  
 7 **SYSTEM.**

8 “(a) DEFINITIONS.—In this section:

9 “(1) BOARD.—The term ‘Board’ means the  
 10 Hazardous Waste Electronic Manifest System Gov-  
 11 erning Board established under subsection (f).

12 “(2) FUND.—The term ‘Fund’ means the Haz-  
 13 ardous Waste Electronic Manifest System Fund es-  
 14 tablished by subsection (d).

15 “(3) SYSTEM.—The term ‘system’ means the  
 16 hazardous waste electronic manifest system estab-  
 17 lished under subsection (b).

18 “(4) USER.—The term ‘user’ means a haz-  
 19 ardous waste generator, a hazardous waste trans-  
 20 porter, an owner or operator of a hazardous waste  
 21 treatment, storage, recycling, or disposal facility, or  
 22 any other individual or entity that—

23 “(A) is required to use a manifest to com-  
 24 ply with any Federal or State requirement to  
 25 track the shipment, transportation, and receipt  
 26 of hazardous waste or other material that is

1 shipped from the site of generation to an off-  
 2 site facility for treatment, storage, disposal, or  
 3 recycling; and

4 “(B) elects to use the system.

5 “(b) ESTABLISHMENT.—Not later than 3 years after  
 6 the date of enactment of this section, the Administrator  
 7 shall establish a hazardous waste electronic manifest sys-  
 8 tem that may be used by any user.

9 “(c) USER FEES.—

10 “(1) IN GENERAL.—The Administrator may im-  
 11 pose on users such reasonable service fees as the Ad-  
 12 ministrator determines to be necessary to pay costs  
 13 incurred in developing, operating, maintaining, and  
 14 upgrading the system.

15 “(2) COLLECTION OF FEES.—The Adminis-  
 16 trator shall—

17 “(A) collect the fees described in para-  
 18 graph (1) from the users in advance of, or as  
 19 reimbursement for, the provision by the Admin-  
 20 istrator of system-related services; and

21 “(B) deposit the fees in the Fund for use  
 22 in accordance with this subsection.

23 “(3) FEE STRUCTURE.—

24 “(A) IN GENERAL.—The Administrator, in  
 25 consultation with information technology ven-

dors, shall determine through the contract award process described in subsection (e) the fee structure that is necessary to recover the full cost to the Administrator of providing system-related services, including costs relating to—

“(i) materials and supplies;

“(ii) contracting and consulting;

“(iii) overhead;

“(iv) information technology (including costs of hardware, software, and related services);

“(v) information management;

“(vi) collection of service fees;

“(vii) investment of any unused service fees;

“(viii) reporting and accounting;

“(ix) employment of direct and indirect government personnel dedicated to establishing and maintaining the system; and

“(x) project management.

“(B) ADJUSTMENTS IN FEE AMOUNT.—

“(i) IN GENERAL.—The Administrator shall increase or decrease amount of a service fee determined under the fee struc-

1           ture described in subparagraph (A) to a  
2           level that will—

3                   “(I) result in the collection of an  
4                   aggregate amount for deposit in the  
5                   Fund that is sufficient to cover cur-  
6                   rent and projected system-related  
7                   costs (including any necessary system  
8                   upgrades); and

9                   “(II) minimize, to the maximum  
10                  extent practicable, the accumulation  
11                  of unused amounts in the Fund.

12               “(ii) TIMING OF ADJUSTMENTS.—Ad-  
13               justments to service fees described in  
14               clause (i) shall be made—

15                   “(I) initially, at the time at  
16                   which initial development costs of the  
17                   system have been recovered by the  
18                   Administrator such that the service  
19                   fee may be reduced to reflect the  
20                   elimination of the system development  
21                   component of the fee; and

22                   “(II) periodically thereafter, upon  
23                   receipt and acceptance of the findings  
24                   of any annual accounting or auditing  
25                   report under subsection (d)(6), if the

1 report discloses a significant disparity  
 2 for a fiscal year between the funds  
 3 collected from service fees under this  
 4 subsection for the fiscal year and ex-  
 5 penditures made for the fiscal year to  
 6 provide system-related services.

7 “(d) HAZARDOUS WASTE ELECTRONIC MANIFEST  
 8 SYSTEM FUND.—

9 “(1) ESTABLISHMENT.—There is established in  
 10 the Treasury of the United States a revolving fund,  
 11 to be known as the ‘Hazardous Waste Electronic  
 12 Manifest System Fund’, consisting of—

13 “(A) such amounts as are appropriated to  
 14 the Fund under paragraph (2); and

15 “(B) any interest earned on investment of  
 16 amounts in the Fund under paragraph (4).

17 “(2) TRANSFERS TO FUND.—There are appro-  
 18 priated to the Fund amounts equivalent to amounts  
 19 collected as fees and received by the Administrator  
 20 under subsection (c).

21 “(3) EXPENDITURES FROM FUND.—

22 “(A) IN GENERAL.—Subject to paragraph  
 23 (2), on request by the Administrator, the Sec-  
 24 retary of the Treasury shall transfer from the  
 25 Fund to the Administrator such amounts as the

1 Administrator determines to be necessary to  
2 pay costs incurred in developing, operating,  
3 maintaining, and upgrading the system under  
4 subsection (c).

5 “(B) USE OF FUNDS.—

6 “(i) IN GENERAL.—Fees collected by  
7 the Administrator and deposited in the  
8 Fund under this section shall be available  
9 to the Administrator for use in accordance  
10 with this section without fiscal year limita-  
11 tion and without further appropriation.

12 “(ii) OVERSIGHT.—The Administrator  
13 shall carry out all necessary measures to  
14 ensure that amounts in the Fund are used  
15 only to carry out the goals of establishing,  
16 operating, maintaining, upgrading, man-  
17 aging, supporting, and overseeing the sys-  
18 tem.

19 “(4) INVESTMENT OF AMOUNTS.—

20 “(A) IN GENERAL.—The Secretary of the  
21 Treasury shall invest such portion of the Fund  
22 as is not, in the judgment of the Secretary of  
23 the Treasury and the Administrator, required  
24 to meet current withdrawals.

1 “(B) INTEREST-BEARING OBLIGATIONS.—

2 Investments may be made only in—

3 “(i) interest-bearing obligations of the  
4 United States; or

5 “(ii) obligations, participations, or  
6 other instruments that are lawful invest-  
7 ments for fiduciaries, trusts, or public  
8 funds, as determined by the Secretary of  
9 the Treasury.

10 “(C) ACQUISITION OF OBLIGATIONS.—For  
11 the purpose of investments under paragraph  
12 (1), obligations may be acquired—

13 “(i) on original issue at the issue  
14 price; or

15 “(ii) by purchase of outstanding obli-  
16 gations at the market price.

17 “(D) SALE OF OBLIGATIONS.—Any obliga-  
18 tion acquired by the Fund may be sold by the  
19 Secretary of the Treasury at the market price.

20 “(E) CREDITS TO FUND.—The interest on,  
21 and the proceeds from the sale or redemption  
22 of, any obligations held in the Fund shall be  
23 credited to, and form a part of, the Fund.

24 “(5) TRANSFERS OF AMOUNTS.—



“(A) IN GENERAL.—The amounts required to be transferred to the Fund under this subsection shall be transferred at least monthly from the general fund of the Treasury to the Fund on the basis of estimates made by the Secretary of the Treasury.

“(B) ADJUSTMENTS.—Proper adjustment shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

“(6) ACCOUNTING AND AUDITING.—

“(A) ACCOUNTING.—For each 2-fiscal-year period, the Administrator shall prepare and submit to Congress a report that includes—

“(i) an accounting of the fees paid to the Administrator under subsection (c) and disbursed from the Fund for the period covered by the report, as reflected by financial statements provided in accordance with—

“(I) the Chief Financial Officers Act of 1990 (Public Law 101–576; 104 Stat. 2838) and amendments made by that Act; and

1 “(II) the Government Manage-  
 2 ment Reform Act of 1994 (Public  
 3 Law 103–356; 108 Stat. 3410) and  
 4 amendments made by that Act; and

5 “(ii) an accounting describing actual  
 6 expenditures from the Fund for the period  
 7 covered by the report for costs described in  
 8 subsection (c)(1).

9 “(B) AUDITING.—

10 “(i) IN GENERAL.—For the purpose  
 11 of section 3515(c) of title 31, United  
 12 States Code, the Fund shall be considered  
 13 a component of an Executive agency.

14 “(ii) COMPONENTS OF AUDIT.—The  
 15 annual audit required in accordance with  
 16 sections 3515(b) and 3521 of title 31,  
 17 United States Code, of the financial state-  
 18 ments of activities carried out using  
 19 amounts from the Fund shall include an  
 20 analysis of—

21 “(I) the fees collected and dis-  
 22 bursed under this section;

23 “(II) the reasonableness of the  
 24 fee structure in place as of the date of

1 the audit to meet current and pro-  
2 jected costs of the system;

3 “(III) the level of use of the sys-  
4 tem by users; and

5 “(IV) the success to date of the  
6 system in operating on a self-sus-  
7 taining basis and improving the effi-  
8 ciency of tracking waste shipments  
9 and transmitting waste shipment  
10 data.

11 “(iii) FEDERAL RESPONSIBILITY.—  
12 The Inspector General of the Environ-  
13 mental Protection Agency shall—

14 “(I) conduct the annual audit de-  
15 scribed in clause (ii); and

16 “(II) submit to the Administrator  
17 a report that describes the findings  
18 and recommendations of the Inspector  
19 General resulting from the audit.

20 “(e) CONTRACTS.—

21 “(1) AUTHORITY TO ENTER INTO CONTRACTS  
22 FUNDED BY SERVICE FEES.—The Administrator  
23 may enter into 1 or more information technology  
24 contracts with entities determined to be appropriate

1 by the Administrator (referred to in this subsection  
2 as ‘contractors’) under which—

3 “(A) the Administrator agrees to award a  
4 contract for the provision of system-related  
5 services; and

6 “(B) the contractor agrees to assume the  
7 initial risk of the information technology invest-  
8 ment, and to obtain reimbursement for invest-  
9 ment costs, operating costs, and other fees, by  
10 receiving as payment an agreed-upon share of  
11 the amounts collected as fees by the Adminis-  
12 trator under subsection (c).

13 “(2) TERM OF CONTRACT.—A contract awarded  
14 under this subsection shall have a term of not more  
15 than 10 years.

16 “(3) ACHIEVEMENT OF GOALS.—The Adminis-  
17 trator shall ensure, to the maximum extent prac-  
18 ticable, that a contract awarded under this sub-  
19 section—

20 “(A) is performance-based;

21 “(B) identifies objective outcomes; and

22 “(C) contains performance standards that  
23 may be used to measure achievement and goals  
24 to evaluate the success of a contractor in per-  
25 forming under the contract and the right of the

1 contractor to payment for services under the  
2 contract, taking into consideration that a pri-  
3 mary measure of successful performance shall  
4 be the development of a hazardous waste elec-  
5 tronic manifest system that—

6 “(i) meets the needs of the user com-  
7 munity; and

8 “(ii) attracts sufficient user participa-  
9 tion and service fee revenues to ensure the  
10 viability of the system.

11 “(4) PAYMENT STRUCTURE.—Each contract  
12 awarded under this subsection shall include a provi-  
13 sion that specifies—

14 “(A) the service fee structure of the con-  
15 tractor that will form the basis for payments to  
16 the contractor;

17 “(B) the fixed-share ratio of monthly serv-  
18 ice fee revenues from which the Administrator  
19 shall reimburse the contractor for system-re-  
20 lated development, operation, and maintenance  
21 costs and provide an additional profit or fee  
22 commensurate with the risk undertaken by the  
23 contractor in performing in accordance with the  
24 contract;

1           “(C) the amount of additional trans-  
2           actional costs attributed to—

3                   “(i) the ancillary costs of the Admin-  
4                   istrator in implementing and managing the  
5                   system, including the costs of integrating  
6                   the applications of the contractor with the  
7                   central data exchange architecture of the  
8                   Environmental Protection Agency;

9                   “(ii) the direct and indirect personnel  
10                  costs incurred by the Administrator to em-  
11                  ploy personnel dedicated to the implemen-  
12                  tation and management of the system; and

13                  “(iii) expenses incurred in procuring  
14                  any independent contractor services to as-  
15                  sist staff of the Administrator in the prep-  
16                  aration of financial statements and reports  
17                  and the conduct of regular user group and  
18                  governance meetings necessary for the  
19                  oversight of the system.

20           “(5) CANCELLATION AND TERMINATION.—

21                   “(A) IN GENERAL.—If the Administrator  
22                   determines that sufficient funds are not made  
23                   available for the continuation in a subsequent  
24                   fiscal year of a contract entered into under this

subsection, the Administrator shall cancel or terminate the contract.

“(B) COSTS.—The costs of cancellation or termination under subparagraph (A) may be paid using—

“(i) appropriations available for performance of the contract;

“(ii) unobligated appropriations available for acquisition of the information technology procured under the contract; or

“(iii) funds subsequently appropriated for payment of costs of the cancellation or termination.

“(C) NEGOTIATION OF AMOUNTS.—The amount payable in the event of cancellation or termination of a contract entered into under this subsection shall be negotiated with the contractor at the time at which the contract is awarded.

“(D) AUTHORITY TO ENTER INTO CONTRACTS.—The Administrator may enter into a contract under this subsection for any fiscal year, regardless of whether funds are made specifically available for the full costs of cancellation or termination of the contract, if—

1 “(i) funds are available at the time at  
 2 which the contract is awarded to make  
 3 payments with respect to a contingent li-  
 4 ability in an amount equal to at least 75  
 5 percent of the estimated costs of a can-  
 6 cellation or termination during the first  
 7 fiscal year of the contract, as determined  
 8 by the Administrator; or

9 “(ii) funds described in clause (i) are  
 10 not available as described in that clause,  
 11 but the contractor—

12 “(I) is informed of the amount of  
 13 any unfunded contingent liability; and

14 “(II) agrees to perform the con-  
 15 tract despite the unfunded contingent  
 16 liability.

17 “(f) HAZARDOUS WASTE ELECTRONIC MANIFEST  
 18 SYSTEM GOVERNING BOARD.—

19 “(1) ESTABLISHMENT.—Not later than 3 years  
 20 after the date of enactment of this section, the Ad-  
 21 ministrator shall establish a board to be known as  
 22 the ‘Hazardous Waste Electronic Manifest System  
 23 Governing Board’.

24 “(2) COMPOSITION.—The Board shall be com-  
 25 posed of 7 members, of which—



1           “(A) 1 member shall be the Administrator  
2           (or a designee), who shall serve as Chairperson  
3           of the Board; and

4           “(B) 6 members shall be individuals ap-  
5           pointed by the Administrator—

6                   “(i) at least 1 of whom shall have ex-  
7                   pertise in information technology;

8                   “(ii) at least 1 of whom shall have ex-  
9                   perience in using the manifest system to  
10                  track the transportation of hazardous  
11                  waste under this subtitle (or an equivalent  
12                  State program); and

13                  “(iii) at least 1 of whom shall be a  
14                  State representative responsible for proc-  
15                  essing those manifests.

16           “(3) DUTIES.—The Board shall meet annually  
17           to discuss, evaluate the effectiveness of, and provide  
18           recommendations to the Administrator relating to,  
19           the system.

20           “(g) REGULATIONS.—

21                  “(1) PROMULGATION.—

22                   “(A) IN GENERAL.—Not later than 1 year  
23                   after the date of enactment of this section, the  
24                   Administrator shall promulgate regulations to  
25                   carry out this section.

1           “(B) REQUIREMENTS.—The regulations  
2           promulgated under subparagraph (A) shall en-  
3           sure that each electronic manifest provides, to  
4           the same extent as paper manifests under appli-  
5           cable Federal and State law, for—

6                   “(i) the ability to track and maintain  
7                   accountability of—

8                           “(I) the person that certifies that  
9                           the information provided in the mani-  
10                          fest is accurately described; and

11                           “(II) the person that acknowl-  
12                          edges receipt of the manifest;

13                          “(ii) if the manifest is electronically  
14                          submitted, State authority to access paper  
15                          copies of manifest; and

16                          “(iii) access to all publicly-available  
17                          information contained in the manifest.

18           “(2) EFFECTIVE DATE OF REGULATIONS.—Any  
19           regulation promulgated by the Administrator under  
20           paragraph (1) and in accordance with section 3003  
21           relating to electronic manifesting of hazardous waste  
22           shall take effect in each State as of the effective  
23           date specified in the regulation.

24           “(3) ADMINISTRATION.—The Administrator  
25           shall carry out regulations promulgated under this

1 subsection in each State unless the State program is  
2 fully authorized to carry out those regulations in lieu  
3 of the Administrator.”.

4 (b) CONFORMING AMENDMENT.—The table of con-  
5 tents of the Solid Waste Disposal Act (42 U.S.C. 6901)  
6 is amended by inserting at the end of the items relating  
7 to subtitle C the following:

“Sec. 3024. Hazardous waste electronic manifest system.”.

